

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

SoCal Chapter

October 12, 2015

VIA E-MAIL ONLY

California Resources Agency
Office of Planning and Research
CEQA.Guidelines@resources.ca.gov

Re: Preliminary Discussion Draft of Changes to CEQA Guidelines

Dear Madam or Sir:

Thank you for the opportunity to submit comments on the Preliminary Discussion Draft of changes to the Guidelines Implementing the California Environmental Quality Act ("CEQA Guidelines" or the "Guidelines"). NAIOP, the Commercial Real Estate Development Association, is the leading organization of developers, owners and related professionals in office, industrial and mixed use real estate. NAIOP provides educational programs, research on trends and innovations, and represents the industry. The NAIOP SoCal Chapter serves Los Angeles and Orange Counties with over 1,000 members. It is the second largest chapter in the United States and is the the commercial real estate organization in Southern California.

NAIOP SoCal members and sponsors have a strong interest in the efficient and effective implementation of CEQA because many of their development projects are subject to CEQA and require Environmental Impact Reports or negative declarations. Like all Californians, NAIOP SoCal members and sponsors value a clean and healthy environment, as well as a sustainable economy to provide opportunity for our growing population. NAIOP SoCal does not advocate rolling back substantive environmental protections, but urges the state to reform and implement CEQA in a manner that curbs abuse of the CEQA process. In that regard, NAIOP SoCal urges the state to implement CEQA with the following principles in mind:

- Provide greater certainty. Eliminate subjective standards that are vague and difficult to understand. Provide the public with a clearer understanding of what is expected.
- Eliminate unnecessary delay and expense.

In this regard, NAIOP SoCal applauds the Office's stated intent in these revisions "to make the process easier and quicker to implement" and "to result in a smoother, more predictable process for agencies, project applicants and the public."

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We believe that many of the Office's proposed revisions will serve those goals, and we support such revisions. We are concerned, however, that some of the proposed revisions will have the opposite effect. Accordingly, we offer the following specific comments on the proposed updates to the CEQA Guidelines.

Sections 15064 and 15064.7

NAIOP SoCal urges the Office to delete the following sentences from proposed §15064(b)(2):

“When relying on a threshold, the lead agency should explain how compliance with the threshold indicates that the project's impacts are less than significant. A lead agency shall not apply a threshold in a way that forecloses consideration of substantial evidence showing that, despite compliance with the threshold, there may still be a significant effect from a project.”

If, as it states, the Office intends these revisions to offer a “more predictable process,” these sentences are a big step in the wrong direction. In its current form, CEQA offers little predictability. One of the few sources of predictability lies in the thresholds of significance. If, for example, a project's emissions of nitrogen oxides fall below the regional air district's threshold of significance, the applicant can be confident that the project will not have a significant impact. But with the addition of these two sentences to the CEQA Guidelines, lead agencies and project applicants will not be able to rely upon generally applicable thresholds of significance. These sentences create yet another issue for project opponents, applicants, and lead agencies to argue about – i.e., whether a threshold of significance is appropriate. Objective thresholds of significance will no longer be reliable, and every threshold of significance will be vulnerable to subjective judgments of a court, thereby creating much less predictability in the process.

Moreover, the proposed revisions impose an additional burden upon lead agencies to “explain how compliance with the threshold indicates that the project's impacts are less than significant.” How lead agencies can offer such an explanation is far from clear. Significance is often determined by reference to thresholds published by agencies such as air quality districts and CalTrans. To require lead agencies to determine “significance” independently of thresholds will necessarily be a highly subjective decision that strips the process of the modest amount of predictability it currently has.

It appears that the Office is proposing these changes based upon the Court of Appeal's decision in *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111. NAIOP SoCal urges caution in formulating the CEQA Guidelines around an isolated ruling or principle from one of the state's intermediate appellate courts where such ruling or statement has not withstood review by the California Supreme Court. A principle applied by a court under one set of circumstances may not necessarily be appropriate under all circumstances. And because the Office's promulgation of CEQA Guidelines carries its own

independent legal effect, the Office's adoption of a principle into the CEQA Guidelines may be effectuating a change in the law.

Appendix G, Section XI. Open Space, Managed Resources, and Working Landscapes

NAIOP SoCal is concerned with the significant broadening of impacts to agricultural lands. Under the existing Appendix G, a project may have a significant effect of the environment if it converts "Prime Farmland," "Unique Farmland," and "Farmland of Statewide Importance" to non-agricultural use. In its current proposal the Office is significantly broadening the threshold to make conversion of *any* "farmland" a significant impact. No reason for this expansion is provided.

Through its traditional system of farmland classification the state has always recognized that not all farmland is of equal value. To consider conversion of any and all farmland to be a significant effect on the environment will open a new avenue for litigation against many development projects, creating needless delays and expenses.

In many areas of the state, real estate development necessarily involves the conversion of farmland. To automatically deem all such development to have a significant impact on the environment, as the Office is proposing here, will require all such development projects to adopt any or all feasible mitigation measures and alternatives. Decisions as to the feasibility of agricultural mitigation and alternatives involve highly subjective judgments. Thus, the change proposed by the Office would expose all development projects converting any amount of "farmland" to litigation on these issues.

Without a mandate from the Legislature, the Office should not be undertaking this significant expansion of CEQA.

Comments Supportive of the Proposed Amendments

Finally, NAIOP SoCal supports the following proposed amendments:

Section 15234 (Remedies and Remand). Addressing remedies principles.

Section 15126.4 (Deferral of Mitigation Details). Allowing deferral of mitigation details under certain circumstances.


Sections 15087 and 15088 (Responses to Comments). Clarifying that the level of detail needed in a response to a comment may correspond with the level of detail in the comment.

Section 15124 (Project Description). Allowing the project description to discuss the project benefits.

These proposed changes inject some much needed common sense and flexibility into the CEQA process without compromising substantive environmental protections.

Once again, NAIOP SoCal appreciates this opportunity to comment on the proposed amendments to the CEQA guidelines, and we thank you for seriously considering the issues we have set forth.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Herzog". The signature is fluid and cursive, with the first name "Peter" and last name "Herzog" clearly distinguishable.

Peter Herzog
Assistant Director of Legislative Affairs